IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05/01/2005

CORAM

THE HONOURABLE MRS. JUSTICE R.BANUMATHI

CRL.APPEAL No.578 of 1997

1. Shanmugam
2. Rajammal ... Appellants /
3. Rasa Gounder A.1 to A.3

-Vs-

State represented
by Inspector of Police, ... Respondent /
Perundurai Police Station. Complainant

This Criminal Appeal arises out of the Judgment dated
04.10.1996 made in S.C.No.32 of 1995 on the file II Additional Sessions Judge,
Periyar District at Erode.

!For Appellants : Mr.K.V.Sridharan

^For Respondent : Mr. V.Jayaprakashnarayanan,
Government Adovcate,
(Crl.Side)

:J U D G M E N T

Appellants are accused 1 to 3 in S.C.No.32 of 1995 on the file
of II Additional Sessions Court, Erode. By the Judgment dated 04.10.1996 ,
the learned Sessions Judge has convicted the Appellants / A.1 to A.3 of the
Charge Wrongful Confinement under S.343 I.P.C. (against A.1 and A.2);
S.343 r/w 34 I.P.C. (against A.3) and imposed fine of Rs.1,000/- on each of
them. By the same Judgment, the learned Sessions Judge has acquitted the
Appellants / A.1 to A.3 of the Charge under S.302 I.P.C. (against A.1); S.302
r/w 34 I.P.C. (against A.2 and A.3).

2. Deceased Karuppasamy Gounder is the husband of A.2
Rajammal. A.1 Shanmugam is the son of A.2 and deceased Karuppasamy Gounder.
A.3 Rasa Gounder is the father of A.2 Rajammal. The accused are the
residents of Vavikadai Village.

3. Case of prosecution could briefly be stated thus:-
About Two years prior to the occurrence, there arose differences between Karuppasamy Gounder and his family. Hence Karuppasamy Gounder left the family and he was living alone and working in Tiruppur. Deceased Karuppasamy Gounder was frequently visiting Vavikadai; but he would not visit his house. On 09.09.1994 – 12.00 noon, P.W.1 - Murugasamy saw Karuppasamy Gounder in the Bus Stop at Vavikadai. A.1 and A.2 had taken him to their house. In their house, A.1 and A.2 chained Karuppasamy Gounder and tied him to a Kattai which was fixed in the Wall. On 11.09.1994, Ramasamy Gounder - the relative of the accused came to the house of Karuppasamy Gounder. He asked A.1 and A.2 not to torture Karuppasamy Gounder and to leave him. In turn, A.1 and A.2 replied that if Karuppasamy Gounder gives them the money from the Private finance, they would leave him. Ramasamy Gounder informed

them that he would arrange for the money; but A.1 and A.2 did not pay heed. Ramasamy Gounder, P.W.1 and others left the place. Karuppasamy Gounder continued to be in confinement.

4. On 13.09.1994 – 4.00 a.m., P.W.1 – Murugasamy heard the noise on the Northern side of his house – house of the accused. On hearing the noise, P.W.1 – Murugasamy and P.W.2 – Shanmugam went to the house of the accused. P.Ws.1 and 2 peeped through the Windows and saw A.1 and A.2 tying Karuppasamy Gounder with Iron Chain. A.1 to A.3 pressed Karuppasamy Gounder with Iron Rod. When P.Ws.1 and 2 peeped through the Windows, the accused had closed the same. At about 2.00 p.m., P.W.1 heard that Karuppasamy Gounder died. P.Ws.1 and 2 sent words to Ruthiramoorthy, brother of A.2 – Rajammal.

5. On 13.09.1994 – 4.00 p.m., P.W.1 – Murugasamy lodged Ex.P.1 – Complaint in Perunthurai Police Station. On the basis of Ex.P.1 – Complaint, case was registered in Crime No.449 of 1994 under Ss.342 and 302 I.P.C. under Ex.P.8 – First Information Report.
6. P.W.7 – Inspector of Police had taken up the investigation. Scene of occurrence – house of the accused was inspected in the presence of witnesses. Ex.P.4 – Observation Mahazar and Ex.P.9 – Rough Plan were prepared on the scene of occurrence. P.W.7 had arranged for taking up Photographs (M.Os.9 to 15). On the same day, from 6.30 p.m. to 9.30 p.m. witnesses were examined in the presence of Panchayatdars and Inquest was held on the body of deceased Karuppasamy Gounder. Ex.P.10 is the Inquest Report. After inquest, body was sent to Autopsy.

7. P.W.4 – Dr.Sivagnanam has conducted Autopsy on the body of deceased Karuppasamy Gounder. He has noted:- Abrasions on the right forehead; Face Swollen; Eyes Protruding; Ligature mark around the neck and Abrasion at right tip of the shoulder. P.W.4 opined that the deceased died of Asphyxia due to Strangulation. Ex.P.3 is the Postmortem Certificate.

8. On 14.09.1994 – 8.15 a.m., A.2 and A.3 were arrested in Vaikkal Puthur and they were remanded to Judicial Custody. On the same day at 2.00 p.m., A.1 was arrested in the presence of P.W.5 – Palanichamy and one Sundaram in Erode Bus Stand near Sinthamani Super Market. When being

interrogated, A.1 had voluntarily confessed his guilt. Ex.P.6 – Admissible portion of the Confession Statement led to the recovery of M.O.8 – Iron Rod from near Kalsandhu near one Muniappan Temple under Ex.P.7 – Seizure Mahazar. Thereafter A.1 was remanded to Judicial Custody. Further witnesses were examined. On completion of investigation, accused were charge sheeted for the offence under Ss.343 and 302 I.P.C.

9. In the trial Court, to substantiate the Charges against the accused, P.Ws.1 to 7 were examined. Exs.P.1 to Ex.P.13 were marked. M.Os.1 to 25 were produced. The accused were questioned about the incriminating evidence and circumstances under S.313 Crl.P.C. The accused denied all of them and stated that at the instance of one Ruthiramoorthy - brother of A.2, a false case has been foisted against them. A.2 and A.3 have stated that they went to their fields at the early morning of 13.09.1994 - 5.30 a.m. and returned back to their house only at 7.00 a.m. and learnt from others about the death of Karuppasamy Gounder. According to them, A.1 was also brought to the Police Station at 1.00 p.m.

10. Denying the charges and stating that a false case has been foisted against him, A.1 raised the plea of alibi. A.1 has been working as Workshop Assistant in Government Industrial Training Institute, Coimbatore and that he has attended the work on 12.09.1994 and 13.09.1 994 and that he stayed back in Coimbatore itself. Only on 13.09.1994 , while he was attending the work, he was informed of the death of his father and on hearing the same, he went to his house and he has been falsely implicated in the case. A.1 has also stated that the false case has been foisted against all three of them at the instance of Ruthiramoorthy.

11. The learned Sessions Judge disbelieved the evidence of P.W.1 on the murder Charge pointing out that P.W.1 lodged the Complaint on the direction of Ruthiramoorthy. The learned Sessions Judge expressed the view that there is no reason to doubt Exs.D.2 and D.3 – Copies of the extract of Attendance Register of the Government Industrial Training Institute, Coimbatore. However, on the evidence of P.W.1, the learned Sessions Judge found that Wrongful Confinement of Karuppasamy Gounder by the accused has been proved and convicted the accused for the offence under S.343 I.P.C. imposing fine amount as aforesaid in Para (1).

12. Challenging the verdict of conviction, Appellants / A.1 to A.3 have preferred this appeal. Onbehalf of the accused, it is contended that the trial Court having acquitted the Appellants / A.1 to A.3 under S.302 I.P.C., ought to have acquitted them for the charge of Wrongful Confinement – under S.343 I.P.C. also. Learned counsel for the Appellants / A.1 to A.3 has further contended that the trial Court has not properly appreciated the fact that P.W.1 was acting at the instance Ruthiramoorthy, who is inimical towards the accused. It is the further contention that when the evidence of P.W.1 has been disbelieved, he is " Neither wholly reliable nor wholly unreliable " and in the absence of corroboration, his evidence ought not to have been made the basis for conviction of the Appellants / A.1 to A.3.

13. Contending that the Wrongful Confinement of Karuppasamy Gounder from 09.09.1994 to the earlier morning of 13.09.1994 is well proved by the evidence of P.W.1, Mr.V.Jayaprakash Narayanan, learned Government Advocate (Crl.Side) has submitted that there is no reason to doubt the version of P.W.1. Drawing the attention of the Court to Ex.P.4 – Observation Mahazar and Ex.P.9 – Rough Plan and the evidence of Investigating Officer, the learned Government Advocate has further submitted that the evidence of P.W.1 is well corroborated by the objective findings during investigation and that his evidence regarding Wrongful Confinement cannot be doubted and prays to sustain the conviction.

14. In consideration of the submissions of both sides, Impugned Judgment, evidence and materials on record, the point that arises for consideration in this appeal is:- Whether the conviction of the Appellants / A.1 to A.3 for Wrongful Confinement of deceased Karuppasamy Gounder suffers from any erroneous appreciation of evidence warranting interference ?.

15. Prior to the occurrence, for quite some time, differences arose between the accused and deceased Karuppasamy Gounder. Due to that differences, Karuppasamy Gounder was living alone and working in Tiruppur. Yet, he was visiting Vavikadai Village. But even if goes to the Village, he would not make visit to his house. On 09.09.1994, Karuppasamy Gounder came to his house. He was found dead on 13.09.1994. For causing the murder of Karuppasamy Gounder, A.1 was charged for the offence under S.302 I.P.C.; A.2 and A.3 were charged under S.302 r/w 34 I.P.C. The gist of murder charge is that all the three accused tied Karuppasamy Gounder with Iron chain and pressed him with Iron rod and Strangulated him to death. A.1 to A.3 were acquitted of the main Charge – murder Charge.

16. A.1 to A.3 are residing at Door No.166/3, Vavikadai Village. A.1 to A.3 are residing in one house. A.1 has been working as Workshop Assistant in Government Industrial Training Institute, Coimbatore. The scene of occurrence is the house of the accused. In their house, Karuppasamy Gounder was found dead and body was found chained. From Ex.P.4 – Observation Mahazar, the body was found as:-

"VERNACULAR LANGUAGE PORTION DELETED"

17. P.W.4 – Dr.Sivagnanam has noted:- Abrasions on the right forehead; Face Swollen; Eyes Protruding; Ligature mark around the neck and Abrasion at right tip of the shoulder. P.W.4 opined that deceased Karuppasamy Gounder died of Asphyxia due to Strangulation. Evidence of P.W.1 and the objective findings during the investigation and the Medical Opinion to the cause of death make out a strong case of Homicidal Death that deceased Karuppasamy Gounder was done to death inside the house of the accused and that body was found chained is a strong circumstance against the accused. The accused ought to be called upon to explain the Wrongful Confinement and death of deceased Karuppasamy Gounder.

18. Accused 2 and 3 have stated that on the early morning of 13.09 .1994 – 5.30 a.m., they went to their fields and returned back at 7.0 0

p.m. and found Karuppasamy Gounder dead and pleaded innocence. A.1 has raised the plea of alibi. According to A.1, on 12.09.1994 and 1 3.09.1994, he has attended the Government Industrial Training Institute, Coimbatore and signed in the Attendance Register (Exs.D.2 and D.3). Further case of A.1 is that on 13.09.1994 – 11.00 a.m., he has learnt about the death of his father and left the Office. To prove this defence, D.W.1 – Training Officer in Government Industrial Training Institute, Coimbatore was examined, who has produced copies of the extract of Attendance Register – Exs.D.2 and A.3. D.W.1 has stated to the effect that A.1 had left the office at 11.00 a.m. on 13.09.1994. He has submitted Ex.D.4 – Report to the Principal of the Institute. That plea of defence raised by A.1 was accepted by the trial Court finding that there is no reason to disbelieve those documents. The finding of the learned Sessions Judge in this regard is as follows:-
"VERNACULAR LANGUAGE PORTION DELETED"

Working of A.1 on 12.09.1994 and 13.09.1994 could not have been the reason for disbelieving the prosecution case. On 13.09.1994, duty time of A.1 was from 8.30 a.m. The occurrence was on the early hours of 13.09.1994 – 4.00 a.m. Exs.D.2 and D.3 could only have weak link to establish the plea of alibi.

19. To further substantiate the plea of alibi, onbehalf of A.1, D.W.2 – Ramadasan Nair, another Training Officer was examined. D.W.2 was then working in Government Industrial Training Institute, Coimbatore. According to him, A.1 was also staying along with him in his Room on 12.09.1994 and 13.09.1994. D.W.2 has further stated that on the early morning of 13.09.1994 – 4.00 a.m., A.1 was with him in his Room. This plea of alibi set forth by A.1 was accepted by the learned Sessions Judge. There is no discussion on the defence set forth by A.2 and A.3. The learned Sessions Judge however found that the evidence of prosecution is not satisfactory and acquitted the accused of the grave offence of murder charge. This Court is of the view that the acquittal of A.1 to A.3 for the charge of murder is not in proper appreciation of :-

(i) Evidence of P.W.1 – Murugasamy;

(ii) Karuppasamy Gounder was found dead in the house of the accused and had been chained;

(iii) Death of Karuppasamy Gounder was Homicidal.

Since the scene of occurrence was in the house of the accused, it was only A.1 to A.3 who had the opportunity of committing the offence of murder. This strong piece of circumstance was not properly taken note of by the learned Sessions Judge. This Court is of the view that acquittal of Appellants / A.1 to A.3 on the murder charge is unmerited and cannot be sustained. Since State has not preferred any appeal, the matter has to be left at that point. However, acquittal of A.1 to A.3 for murder charge cannot be urged as a ground for challenging the conviction of the accused for Wrong ful Confinement of deceased Karuppasamy Gounder.

20. As noted above, A.1 and A.2 were charged for the offence

under S.343 I.P.C.; A.3 for the offence under S.343 r/w 34 I.P.C. - for Wrongful Confinement of Karuppasamy Gounder for Three or more days. P.W.1 is the main witness. He has clearly stated about the taking of Karuppasamy Gounder by A.1 and A.2 on 09.09.1994 – 12.00 noon. A.1 and A.2 chained him and tied him to a Kattai which is fixed to the Wall. P.W.1 has further stated that on 11.09.1994, Ramasamy Gounder – relative of Karuppasamy Gounder (Karuppasamy Gounder is the maternal uncle of wife of Ramasamy Gounder) came to the house of the accused. He has asked A.1 and A.2 not to torture Karuppasamy Gounder. A.1 and A.2 replied saying that if Karuppasamy Gounder takes the money from the private finance and gives the same to them, they would leave him. Ramasamy Gounder informed them that he would arrange for the money; but A.1 and A.2 did not pay heed. P.W.1 has stated about the continual confinement of Karuppasamy Gounder. On 13.09.1994 – 4.00 a.m., P.W.1 and his neighbour – P.W.2 (Shanmugam) heard noise on the Northern side. When they went to the house of the accused, they saw A.1 and A.2 tying Karuppasamy Gounder with Iron chain and A.1 to A.3 pressing with Iron Rod and strangulating him. P.W.1 is the resident of Vavikadai. From Ex.P.9 – Rough Plan, it is seen that his house is situated within short distance of about 50 feet on the Southern side of the house of accused. P.W.1 is a natural and probable witness. His version cannot be doubted on the ground of hostility of P.W.2 – Shanmugam.

21. Contending that P.W.1 is to be termed as " Neither wholly reliable nor wholly unreliable ", learned counsel for the Appellants / A.1 to A.3 has argued that in case of such nature, the Court is to be careful in appreciating the testimony of the solitary witness. In support of his contention, the learned counsel for the Appellants / A.1 to A.3 relied upon 2002-2 L.W. (Crl.) 725 – Murugan and others vs. State, etc. In the said case, evidence of solitary witness was disbelieved mainly on the ground of material discrepancies of the overt act attributed to the accused between Ex.P.1 – Complaint and the deposition of P.W.1 and that there had been contradiction between the evidence of single witness – P.W.1 and the medical testimony. The facts and circumstance and the principle laid down in that case stand on a different footing.

22. No doubt, in this case, the prosecution relied upon the evidence of solitary witness – P.W.1. Even if the case against the accused rests on the evidence of single witness, it is enough to sustain the conviction if it is found to be a truthful witness. Prudence however requires some corroboration to be sought for from other prosecution witnesses in support of the testimony of solitary witness. Evidence of P.W.1 is mainly attacked on the ground that he has not immediately laid the Complaint on seeing A.1 and A.2 taking Karuppasamy Gounder on 09.09.1994 and Wrongfully confining him on 11.09.1994. In his cross-examination, P.W.1 was confronted regarding the lodging of the Complaint, which reads thus:-

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Evidence of P.W.1 is attacked on the ground that he remained indifferent to the act of the accused on the dates – 09.09.1994 and 11.09.199 4 and his evidence cannot be relied upon for the Wrongful Confinement. It is further contended that nothing prevented the prosecution from examining Ramasamy

Gounder and Ruthiramoorthy to corroborate the evidence on the act of the accused. P.W.1 being a neighbour, a natural witness to speak about the Confinement. His evidence cannot be doubted on the aspect of Wrongful Confinement of Karuppasamy Gounder from 09.09.1994 to 13.09.1994.

23. In his cross-examination, P.W.1 has admitted that he has lodged Ex.P.1 – Complaint on the direction of Ruthiramoorthy, who is the brother of A.2. It is contended that Ruthiramoorthy had already been inimical towards the accused and that P.W.1 has acted at the instigation of Ruthiramoorthy clearly shows that P.W.1 was actuated by malice and that the conviction based on his testimony in Wrongful Confinement cannot be sustained. This contention does not merit acceptance. P.W.1 has no reason to falsely implicate the accused in the murder charge. His evidence is strengthened by the objective findings during investigation. M.Os.9 to 15 – Photographs clearly show that Karuppasamy Gounder had been chained and tied with Iron Chain. That Iron Chains (M.Os.1 to 3) were seized under Ex.P.5 – Seizure Mahazar from the house of the accused and the same was identified by P.W.1 for tying Karuppasamy Gounder.

24. A.2 and A.3 were arrested on 14.09.1994 – 8.15 a.m. A.1 was arrested at Erode Bus Stand in the presence of P.W.5 – Palanichamy and one Sundaram. His Confession Statement led to the recovery of M.O.8 – Iron rod from near Kalsandhu near Muniappan Temple under Ex.P.7 – Seizure Mahazar. Seizure of M.O.8 – Iron Rod at the instance of A.1 is a strong militating circumstance against A.1. A.1 has not offered any explanation for seizure of M.O.8 at his instance.

25. Conviction of Appellants / A.1 to A.3 for Wrongful Confinement of Karuppasamy Gounder does not suffer from any infirmity warranting interference. The finding of guilt, conviction and the fine amount imposed are to be confirmed. This appeal has no merits and is bound to fail.

26. Therefore, the Judgment of the II Additional Sessions Judge, Erode in S.C.No.32 of 1995 (dated:04.10.1996) convicting the Appellants / A.1 and A.2 under S.343 I.P.C. and the fine amount imposed (Rs.1 ,000/- each) and convicting the Appellant / A.3 under S.343 r/w 34 I.P.C. and the fine amount imposed (Rs.1,000/-) are confirmed and this appeal is dismissed.

Index: Yes

Internet: Yes

Note to Office:
Registry is directed to send
the copy of the Judgment to the
trial Court forthwith.

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To
1. The II Additional Sessions Judge,
Erode.

2. The Principal Sessions Judge,
Erode.

3. The Inspector of Police,
Perundurai Police Station,
Perundurai.

4. The Public Prosecutor,
High Court, Madras.